

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 104**

As Amended by Senate Committee of the Whole

**Brief\***

SB 104, as amended, would enact the Kansas Taxpayer Protection Act (Taxpayer Protection Act), enact the Golden Years Homestead Property Tax Freeze Act (Tax Freeze Act), allow disabled veteran renters to claim the property tax refunds under the current Homestead Property Tax Refund Act (Homestead), and allow individual income taxpayers to claim the expense deduction.

***Kansas Taxpayer Protection Act***

The bill would require paid tax return preparers to sign any income tax return prepared by or substantially prepared by the preparer and to include the preparer's federal preparer tax identification number on any such return. Any failure to do so would subject the preparer to a civil penalty of \$50 per return with a maximum of \$25,000 in civil penalties per preparer per year. Any civil penalties assessed could be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected would be deposited in the State General Fund.

The bill would authorize the Secretary of Revenue (Secretary) to enjoin any person from acting as a paid tax preparer by seeking a temporary or permanent order from a court of competent jurisdiction enjoining such conduct. Under the bill, an injunction could be issued by a court if the preparer has engaged in any of the following conduct:

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Prepared a return that understates the taxpayer's liability due to an "unreasonable position," as that term is defined in the Internal Revenue Code;
- Prepared a return that understates the taxpayer's liability due to "willful or reckless conduct," as that term is defined in the Internal Revenue Code;
- Fails to, when required, furnish a signed copy of the return including the preparer's federal preparer tax identification number, retain a copy of the return, or be diligent in determining eligibility for tax benefits;
- Negotiates a check issued to the taxpayer by the Kansas Department of Revenue without the permission of the taxpayer;
- Engages in any conduct subject to any criminal penalty provided for in Chapter 79 of the *Kansas Statutes Annotated* or amendments thereto;
- Misrepresents the preparer's education, experience, or eligibility to practice tax preparation;
- Guarantees the payment of any tax refund or the allowance of any tax credit; or
- Engages in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

The bill would allow the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing such injunctions, and the Secretary would be required to publish an annual report concerning such injunctions on the website of the Kansas Department of Revenue.

The bill would provide that any person, whether or not a resident of Kansas, submits to the jurisdiction of the courts of the State of Kansas for purposes of such injunctions by engaging in any conduct that could give rise to a cause of action under the Taxpayer Protection Act. The bill would provide that legal actions brought under the Taxpayer Protection Act would be brought in the district court of Shawnee County. The Secretary would be permitted to enter into consent judgments with respect to violations of the Taxpayer Protection Act in lieu of actions seeking injunctions under the Taxpayer Protection Act.

The bill would authorize the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Taxpayer Protection Act.

#### ***Golden Years Homestead Property Tax Freeze Act***

The bill would establish a new property tax circuit breaker refund program (refund program) beginning in tax year 2019 that would provide refunds of a portion of property taxes paid on qualifying residential homestead property equivalent to the total property tax increase over the base year. For taxpayers qualifying at the time of enactment, tax year 2018 liability would be deemed as the base year. For all other taxpayers, the base year would be the first year in which they are eligible to claim the refund provided by the Tax Freeze Act.

In order to qualify for the refund program, the bill would require taxpayers to have a household income of less than \$50,000 and be 65 years of age or older or a disabled veteran. The value of the qualifying residential homestead property also would have to be less than \$350,000. Qualifying taxpayers would be ineligible to claim a Golden Years refund if they are seeking to claim either of the two existing circuit breaker programs: the Homestead Property Tax Refund or the Selective Assistance for Effective Senior Relief (SAFESR) Refund. The bill would allow surviving spouses of qualified

individuals to continue in the Golden Years program unless they subsequently remarry. Golden Years claims would be required to be filed by April 15, relative to refund amounts determined by the previous property tax year's liability.

Under the bill, disabled veterans would include Kansas residents honorably discharged from active service in any branch of the armed forces of the United States or Kansas National Guard who have been determined to have a 50 percent permanent disability sustained while on active duty.

Beginning with the second year of the program, the Director of Taxation would be required to send county clerks electronic records by October 15 of each year containing names of eligible claimants who have received refunds under the Tax Freeze Act for the prior year.

Under the bill, the Director of Taxation would have authority to apply refunds to any state tax liability of the qualified individual or other member of the household. Remaining refunds would first be applied to any delinquent property taxes on the homesteads and then to any current property tax liability.

The bill would grant the Secretary broad authority to adopt rules and regulations necessary for administration of the Tax Freeze Act.

### ***Disabled Veteran Renters***

The bill would also allow disabled veterans who are renters to claim refunds under the current Homestead program under the statutory presumption that 15.0 percent of qualifying rental payments would be deemed the equivalent of property taxes paid for purposes of that program. (*Note:* Legislation enacted in 2012 had removed all renters from the Homestead program.)

## ***Expense Deduction***

The bill would allow individual income taxpayers to begin claiming the expense deduction (provided by KSA 2018 Supp. 79-32,143a) for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2019.

## **Background**

### ***SB 104***

SB 104 was introduced by the Senate Select Committee on Federal Tax Code Implementation at the request of Senator Longbine.

At the Senate Committee on Assessment and Taxation hearing, a representative of H&R Block testified in support of the bill. No other testimony was provided.

The Senate Committee amended SB 104 to clarify the provisions of the bill would not apply to individuals licensed as Certified Public Accountants (CPAs). H&R Block had recommended this clarification, noting CPAs are regulated by the Kansas Board of Accountancy.

The Senate Committee of the Whole amended SB 104 to include the provisions of SB 91 regarding the Tax Freeze Act and disabled veteran renters; and to include the provisions related to the expense deduction. The relevant background for SB 91 is included below.

### ***SB 91 (Tax Freeze Act, Disabled Veteran Renters)***

SB 91 was introduced by Senators Holland, Baumgardner, Doll, Faust-Goudeau, Haley, Hawk, Lynn, Pettey, and Sykes.

During the Senate Committee on Assessment and Taxation hearing on February 14, Senator Holland appeared as the lead proponent. Other proponents included Senators Baumgardner and Faust-Goudeau, representatives of the Kansas Association of Realtors and the Kansas Silver Haired Legislature, and two private citizens. The Sedgwick County clerk submitted written-only testimony in opposition to the bill. Written-only neutral testimony was submitted by representatives of the AARP, Johnson County Board of County Commissioners, Kansas Association of Counties, and the League of Kansas Municipalities.

SB 91, as introduced, would have prevented taxpayers with homesteads subject to mortgages or other security interests from qualifying for refunds under the Golden Years program and restored the ability of all renters otherwise qualified under the income and demographic tests to claim traditional Homestead refunds. On February 25, the Senate Committee amended the bill to remove the prohibition against property subject to liens being eligible for Golden Years refunds and to limit the restoration of Homestead refunds to only those renters who are disabled veterans.

***Fiscal Information***

*SB 104, as Introduced*

According to the fiscal note prepared by the Division of the Budget on SB 104, as introduced, the Department of Revenue indicates the fines provided for by the bill have the potential to increase State General Fund revenues; however, the Department was unable to estimate the amount of such increase. The costs associated with enactment of the bill are estimated to be negligible and could be absorbed within existing resources. The Office of the Attorney General indicates the Taxpayer Protection Act has the potential to increase litigation costs beginning in FY 2020, but did not estimate the amount of such an increase.

*Senate Committee of the Whole Amendments*

A representative of the Department of Revenue stated the Tax Freeze Act, disabled veteran renters, and expense deduction provisions would be expected to have the following impact on State General Fund receipts.

**(DOLLARS IN MILLIONS)**

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>
Golden Years Refunds \$	(4.5)	(9.1)	(13.6)
Disabled Veteran	(0.5)	(0.5)	(0.5)
Renters Refunds			
Expense Deductions	(9.0)	(9.0)	(9.0)
<b>Total</b>	<b><u>\$ (14.0)</u></b>	<b><u>\$ (18.6)</u></b>	<b><u>\$ (23.1)</u></b>

Note: Totals may not add due to rounding.

Administrative costs associated with Senate Committee of the Whole amendments to SB 104 were not immediately available.

Any fiscal effect associated with enactment of SB 104 is not reflected in *The FY 2020 Governor's Budget Report*.